

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JUAN CARLOS TORRES,
Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security
Defendant.

No. EDCV 11-315 AGR

MEMORANDUM OPINION AND ORDER

Plaintiff ("Torres") filed this action on February 22, 2011. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on March 14 and 22, 2011. (Dkt. Nos. 6, 7.) On November 29, 2011, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

I.

PROCEDURAL BACKGROUND

On November 5, 2007, Torres filed applications for disability insurance benefits and supplemental security income, alleging an onset date of September 30, 2006. Administrative Record (“AR”) 15, 112-14, 120-22. The applications were denied initially and upon reconsideration. AR 15, 84-85. Torres requested a hearing before an Administrative Law Judge (“ALJ”). AR 102. On August 24, 2009, the ALJ conducted a hearing at which Torres, a medical expert, and a vocational expert (“VE”) testified. AR 51-83. On November 2, 2009, the ALJ issued a decision denying benefits. AR 12-26. On December 22, 2010, the Appeals Council denied the request for review. AR 2-4. This action followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

III.

DISCUSSION

A. Disability

A person qualifies as disabled and is eligible for benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

B. The ALJ’s Findings

The ALJ found that Torres has the severe impairments of “status post stroke on September 30, 2006, with residual right sided weakness; torn meniscus in the right knee; and mood disorder associated with generalized medical condition.” AR 17. He has the residual functional capacity (“RFC”) to perform sedentary work. AR 21. He can stand and walk 4 hours in an 8 hour workday, sit 6 hours in an 8 hour workday, and lift/carry 20 pounds occasionally and 10 pounds frequently. *Id.* He is limited to occasional pushing and pulling, including operation of hand and foot controls, with the right upper and right lower extremities. *Id.* He is limited to occasional climbing, crouching, crawling and kneeling. *Id.* He is limited to the performance of simple, repetitive tasks. *Id.* Torres is unable to perform any past relevant work, but there are jobs that exist in significant numbers in the national economy that he can perform. AR 24-25.

C. Step Five of the Sequential Analysis

At step five, the Commissioner bears the burden of demonstrating there is other work in significant numbers in the national economy the claimant can do. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006). If the Commissioner satisfies this burden, the claimant is not disabled and not entitled to disability benefits. If the Commissioner cannot meet this burden, the claimant is “disabled” and entitled to disability benefits. *Id.* The Commissioner can meet the burden of showing that there is

1 other work in 'significant numbers' in the national economy that claimant can do by
 2 eliciting the testimony of a vocational expert. *Id.*

3 **1. Simple, Repetitive Tasks Limitation**

4 Torres contends that the ALJ erroneously relied on the VE's testimony, which
 5 contradicts the Dictionary of Occupational Titles ("DOT").

6 The DOT raises a presumption as to job classification requirements. *Johnson v.*
 7 *Shalala*, 60 F.3d 1428, 1435 (9th Cir. 1998). An ALJ may not rely on a vocational
 8 expert's testimony regarding the requirements of a particular job without inquiring
 9 whether the testimony conflicts with the DOT. *Massachi v. Astrue*, 486 F.3d 1149,
 10 1152-53 (9th Cir. 2007) ("the adjudicator has an *affirmative responsibility* to ask about
 11 any possible conflict between that [vocational expert] . . . evidence and information
 12 provided in the [DOT]") (citing Social Security Ruling 00-4p)¹ (emphasis in original).

13 Relying on testimony from the VE, the ALJ concluded that there were sufficient
 14 jobs in the economy that Torres could perform. AR 24-25. The VE identified four jobs
 15 that Torres could perform: cashier II, order clerk, final assembler – eyeglasses, and call
 16 out operator. AR 25, 77-79. The VE stated that her testimony was consistent with the
 17 DOT except where she eroded the number of available jobs to account for Torres'
 18 standing and walking limitations. AR 77, 80.

19 According to the DOT, cashier II, order clerk, and call out operator all require a
 20 reasoning level of 3, which means:

21 Apply commonsense understanding to carry out instructions furnished in
 22 written, oral, or diagrammatic form. Deal with problems involving several
 23 concrete variables in or from standardized solutions.

24 DOT 211.462-010, 209.567-014, 237.367-014.

25
 26 ¹ Social Security rulings do not have the force of law. Nevertheless, they "constitute
 27 Social Security Administration interpretations of the statute it administers and of its own
 28 regulations," and are given deference "unless they are plainly erroneous or inconsistent
 with the Act or regulations." *Han v. Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989)
 (footnotes omitted).

1 However, the job of final assembler – eyeglasses requires a reasoning level of 1,
2 which means:

3 Apply commonsense understanding to carry out simple one-or two-step
4 instructions. Deal with standardized situations with occasional or no
5 variables in or from these situations encountered on the job.

6 DOT 713.687-018.

7 The ALJ's RFC determination limits Torres to "simple, repetitive tasks." AR 21.
8 Torres argues that jobs requiring a reasoning level of 3 should be considered outside
9 the requirement of simple repetitive tasks. He further argues that he could not do the
10 final assembler – eyeglasses job, which requires a reasoning level of 1, because it
11 required bilateral and at least frequent level of fingering and handling.

12 The court has not located a published decision by the Ninth Circuit on the issue of
13 whether someone limited to simple, repetitive work can perform jobs requiring Level 3
14 reasoning.² However, the district courts in this circuit have generally held that a
15 limitation to simple, repetitive tasks is inconsistent with jobs requiring Level 3 reasoning.
16 See, e.g., *Grimes v. Astrue*, 2011 WL 164537, at *4 (C.D. Cal. Jan. 18, 2011); *Carney*
17 *v. Astrue*, 2010 WL 5060488, at *5 (C.D. Cal. Dec. 6, 2010); *Etter v. Astrue*, 2010 WL
18 4314415, at *3 (C.D. Cal. Oct. 22, 2010); *Bagshaw v. Astrue*, 2010 WL 256544, at *5
19 (C.D. Cal. Jan. 20, 2010); *Pak v. Astrue*, 2009 WL 2151361, at *7 (C.D. Cal. Jul.14,
20 2009); *Tudino v. Barnhart*, 2008 WL 4161443, at *11 (S.D. Cal. Sept. 5, 2008). A
21 minority of district courts in this circuit have held, however, that simple, repetitive tasks
22 are not necessarily inconsistent with Level 3 reasoning. See, e.g., *Dahl v. Astrue*, 2011
23 WL 2837660, *1 (C.D. Cal. July 18, 2011) (looking to the record to determine whether a

24
25 ² There is a split among the circuit courts on whether a limitation to simple, repetitive
26 work is compatible with the performance of jobs requiring Level 3 reasoning. Compare
27 *Terry v. Astrue*, 580 F.3d 471, 478 (7th Cir. 2009); *Hillier v. Soc. Sec. Admin.*, 486 F.3d
28 359, 367 (8th Cir. 2007) with *Hackett v. Barnhart*, 395 F.3d 1168, 1176 (10th Cir. 2005).

claimant can perform the type of work identified by the vocational expert); *Wentz v. Astrue*, 2009 WL 3734104, at *14 (D. Or. Nov. 4, 2009) (same). The Commissioner urges the court to follow the minority view. It is unnecessary to reach that issue.

The VE's testimony regarding the final assembler – eyeglasses job, which requires a reasoning level of 1, does not conflict with the DOT. A "simple repetitive tasks" limitation has been held consistent with jobs requiring Level 1 reasoning. *Chavez v. Astrue*, 699 F. Supp. 2d 1125, 1136 n.10 (C.D. Cal. 2009). Torres does not dispute that simple repetitive tasks are consistent with Level 1 reasoning.

2. Manual Limitations

Torres contends the ALJ's finding that he could perform other work is inconsistent with the VE's testimony regarding the bilateral requirement and the frequent level of fingering and handling in sedentary work.

The ALJ's RFC determination included an occasional pushing and pulling limitation with the right extremities. AR 21. The VE testified that a person who was restricted to occasional use of the right upper extremity for pushing and pulling could perform the jobs of cashier II, call out operator, order clerk, and final assembler–eyeglasses. AR 76-77. The ALJ adopted the VE's finding. AR 24-25.

In response to different hypotheticals, the VE testified that a person who was restricted to occasional handling and fingering could not perform the jobs of cashier II, order clerk, final assembler – eyeglasses, or any other sedentary work because sedentary work requires at least frequent bilateral fingering and handling. AR 78. The VE testified that a person with occasional handling and fingering limitations could perform the call out operator job, but not if the person must also avoid frequent public contact.³ AR 78-80.

³ In the Reply, Torres argues that the call out operator job, with 18,201 jobs nationally and 1,006 jobs locally, does not constitute a significant number of positions to support the ALJ's finding. JS 13. Torres relies on *Coletta v. Massanari*, 163 F. Supp. 2d 1101 (N. D. Cal. 2001), which found that 4,752 jobs in the national economy and 363

1 The ALJ did not adopt the fingering and handling limitations or the public contact
 2 limitation in his RFC assessment. AR 21. Contrary to Torres' assertions, the ALJ's
 3 findings are not inconsistent with the VE's testimony.

4 Substantial evidence supports the ALJ's Step Five determination.

5 **D. Development of the Record**

6 Torres contends the ALJ failed to develop the record regarding his mental
 7 impairments.

8 It is the claimant's duty to prove she is disabled. *Mayes v. Massanari*, 276 F.3d
 9 453, 459 (9th Cir. 2001) (as amended); see 42 U.S.C. § 423(d)(5)(A) (the claimant must
 10 furnish medical and other evidence of her disability); 20 C.F.R. § 404.1512(c) ("You
 11 must provide medical evidence showing that you have impairment(s) and how severe it
 12 is during the time you say you are disabled.").

13 "The ALJ . . . has an independent duty to fully and fairly develop the record and to
 14 assure that the claimant's interests are considered." *Tonapetyan v. Halter*, 242 F.3d
 15 1144, 1150 (9th Cir. 2001) (citations and quotation marks omitted). "An ALJ's duty to
 16 develop the record further is triggered only when there is ambiguous evidence or when
 17 the record is inadequate to allow for proper evaluation of the evidence." *Mayes*, 276
 18 F.3d at 459-60. This principle does not, however, allow a claimant to shift her own
 19 burden of proving disability to the ALJ. *Id.* at 459.

20 As the ALJ noted, Dr. Karlsson, Torres' Qualified Medical Examiner ("QME") for
 21 the worker's compensation claim, opined that Torres could make routine, common
 22 sense decisions and restricted him from working at jobs causing "undue stress." AR 18,
 23 380, 382. She precluded him from "working in a stressful atmosphere" with "excessive
 24

25
 26 jobs in California did not constitute significant numbers. *Id.* at 1106-07. *Coletta* is
 27 distinguishable because the number of call out operator jobs available here is
 28 significantly higher. See *Barker v. Sect'y of Health & Human Servs.*, 882 F.2d 1474,
 1479 (9th Cir. 1989) (holding that 1,266 jobs in region constitutes significant numbers).

1 pressure and unordinary workload,” but did not preclude him from all work.⁴ AR 380.
 2 He could work “occasional, but not excessive overtime.” *Id.* Dr. Karlsson noted that
 3 Torres’ former job caused “a good deal of stress.” AR 376.

4 Contrary to Torres’ argument, Dr. Karlsson did not restrict Torres to “no stress.”
 5 Thus, the VE did not testify that no work would be available “based on Dr. Karlsson’s
 6 restriction,” as Torres argues. In response to a hypothetical posed by Torres’ attorney,
 7 the VE testified that an individual who could be exposed to “no stress” could not work
 8 because “all jobs have some stress to them.” AR 25, 81.

9 The ALJ’s duty to develop the record further was not triggered. The ALJ did not
 10 find that the record was ambiguous or inadequate regarding the effects of stress on
 11 Torres’ ability to work. Nor did any physician render an opinion that the record was
 12 ambiguous or inadequate regarding stress. See *Tonapetyan*, 242 F.3d at 1150 (duty to
 13 develop record existed when ALJ relied on physician who expressed that more medical
 14 evidence was needed to state a diagnostic opinion). The ALJ did not err.

15 **E. Credibility**

16 “To determine whether a claimant’s testimony regarding subjective pain or
 17 symptoms is credible, an ALJ must engage in a two-step analysis.” *Lingenfelter v.*
 18 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007).

19 At step one, “the ALJ must determine whether the claimant has presented
 20 objective medical evidence of an underlying impairment ‘which could reasonably be
 21 expected to produce the pain or other symptoms alleged.’” *Id.* (citations omitted);
 22 *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (*en banc*). The ALJ found that
 23 Torres’ “medically determinable impairments could reasonably be expected to cause
 24 the alleged symptoms.” AR 23.

25
 26 ⁴ Contrary to Torres’ argument, the ALJ recognized the stress restriction from Dr.
 27 Karlsson. AR 18. The ALJ considered Dr. Karlsson’s opinion along with the opinions of
 28 Dr. Dusovich, who examined Torres for complaints of insomnia, Dr. Colonna, a
 psychological consultative examiner, and Dr. Balson, a State Agency review physician.
 AR 19, 20, 23, 82, 406-13, 430, 441.

1 “Second, if the claimant meets this first test, and there is no evidence of
 2 malingering, ‘the ALJ can reject the claimant’s testimony about the severity of [the
 3 claimant’s] symptoms only by offering specific, clear and convincing reasons for doing
 4 so.’” *Lingenthofelter*, 504 F.3d at 1036 (citations omitted). “In making a credibility
 5 determination, the ALJ ‘must specifically identify what testimony is credible and what
 6 testimony undermines the claimant’s complaints.’” *Greger v. Barnhart*, 464 F.3d 968,
 7 972 (9th Cir. 2006) (citation omitted).

8 The ALJ mentioned no evidence of malingering. AR 15-26. In finding Torres’
 9 credibility “suspect,” the ALJ discussed at least three factors for rejecting Torres’
 10 testimony regarding his complete inability to perform work: (1) inconsistencies in his
 11 testimony and between his testimony and the medical record; (2) conservative
 12 treatment; and (3) secondary gain. AR 22-23.

13 **1. Inconsistencies**

14 An ALJ may consider inconsistencies in a claimant’s testimony when weighing
 15 credibility. *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002). The ALJ
 16 discounted Torres’ credibility on the ground that he testified that he could read and
 17 watch sporting events, which he reasoned “contradicted the claimant’s oral testimony
 18 that he has visual problems, especially when things move too rapidly.” AR 23, 57, 63-
 19 64, 176.

20 The ALJ also discounted Torres’ credibility based on inconsistencies between his
 21 testimony and the medical record. Although lack of objective medical evidence
 22 supporting the degree of limitation “cannot form the sole basis for discounting pain
 23 testimony,” it is a factor that an ALJ may consider in assessing credibility. *Burch v.*
 24 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). The ALJ correctly noted that the functional
 25 assessments in the record do not “support the level of limitations [Torres] espouses.”
 26 AR 22. Torres’ treating doctor, Dr. Boyarsky, opined that Torres could lift and/or carry a
 27 maximum of 30 pounds, frequently lift and/or carry 10 pounds, and occasionally lift
 28 and/or carry 20 pounds. AR 321. Torres could stand and/or walk up to 4 hours per

1 day, sit up to 8 hours per day, and push and/or pull up to 70 pounds. *Id.* He could
2 occasionally climb, balance, crawl, reach, handle, and finger. AR 321-22. He could
3 frequently speak. AR 322. He was not limited in stooping, kneeling, crouching,
4 twisting, seeing, or hearing. AR 321-22. Dr. Boyarsky recommended vocational
5 rehabilitation to allow Torres to return to work with work restrictions. AR 323-24. Dr.
6 Karlsson concluded Torres could work if he avoided undue stress. AR 376, 380.
7 Consultative examiner Dr. Lim concluded Torres could stand and/or walk for 4 hours
8 per day, sit for 6 hours per day, lift and/or carry 20 pounds occasionally and 10 pounds
9 frequently, occasionally push and pull with the right upper and right lower extremities,
10 and occasionally climb, crouch, crawl, and kneel. AR 424. Dr. Colonna concluded
11 Torres could understand, remember and carry out simple instructions without difficulty,
12 and could understand, remember and carry out detailed instructions with mild difficulty.
13 AR 430. He could make simplistic work-related decisions and could interact
14 appropriately with others. *Id.*

15 The ALJ noted that diagnostic testing was negative for cognitive impairment. AR
16 22. The ALJ noted that Torres' speech difficulties were "repeatedly contradicted by the
17 record," except on one occasion in which Torres' speech was "very slightly dysarthric"
18 with evidence of stuttering and stammering. AR 22, 369. In support, the ALJ cited
19 notes from Beverly Hospital immediately after Torres' stroke that indicate that Torres'
20 speech was "significantly improved" after his stroke, and the record as a whole, which
21 lacks evidence of a cognitive impairment. AR 22, 227. Torres contends the record
22 contains evidence referring to his speech and cognitive deficits. JS 20, AR 153, 366,
23 369, 394. While there are references in the record to Torres' clear speech, there are
24 also references in the record to Torres' impaired speech. AR 154, 331, 345, 366, 369,
25 379, 394, 424. It is the ALJ's province to resolve conflicts in the medical record. When
26 the evidence is susceptible to more than one rational interpretation, the court must defer
27 to the Commissioner's decision. *Moncada*, 60 F.3d at 523.

1 The ALJ noted that Torres did not complain during medical examinations about
 2 “most of the things he testified to at the hearing.”⁵ AR 22. The medical record reflects
 3 Torres did not complain about adverse side effects from medications. See AR 61, 64.
 4 Whereas he testified at the hearing that he could sit for “half an hour or so” before
 5 having to get up, and he had “difficulty in lifting” coins, he reported to Dr. Boyarsky on
 6 March 29, 2007 that his right-sided weakness does not interfere with sitting and only
 7 slightly interferes with lifting.⁶ AR 65, 311. Whereas Torres testified he has difficulty
 8 gripping, the medical record indicates Torres’ grip strength was 55 pounds with the right
 9 hand and there is no indication of a complaint about difficulty gripping. AR 422. An ALJ
 10 may properly rely on a claimant’s failure to report medical problems in discounting a
 11 claimant’s credibility. See *Greger*, 464 F.3d at 972 (failure to report shortness of breath
 12 or chest pain).

13 2. Conservative Treatment

14 The ALJ discounted Torres’ credibility based on the conservative treatment he
 15 received. AR 22. “[E]vidence of ‘conservative treatment’ is sufficient to discount a
 16 claimant’s testimony.” *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007). The ALJ
 17 noted that “the doctors did not prescribe much treatment or a lot of medication for
 18 [Torres’] complaints.” AR 22. Torres takes aspirin and applies topical anti-inflammatory
 19 gels for his physical pain. AR 327, 343, 359, 421, 427. The ALJ properly considered
 20 aspirin and anti-inflammatory gels as conservative treatment. *Parra*, 481 F.3d at 750-
 21 51 (reliance on over-the-counter pain medication may be used to discount credibility);
 22 *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (describing anti-

24
 25 ⁵ The ALJ found that Torres had severe impairments, and the record does contain
 26 many of Torres’ complaints about right sided weakness, right knee pain, anxiety,
 27 depression, and insomnia, all of which he testified to at the hearing. See, e.g., AR 57-
 28 60, 222, 283, 289, 295, 298, 311, 344, 361, 391-92, 407, 415, 421.

⁶ Dr. Boyarsky allowed Torres to lift and/or carry a maximum of 30 pounds and sit a
 total of 8 hours per 8 hour day. AR 321.

1 inflammatory medication as conservative treatment). For his other complaints, Torres
2 takes Fluoxetine for depression and takes Zolpidem and Sonata for insomnia. AR 160,
3 421, 427. In 2006, he took Temazepam for six weeks and had approximately six
4 sessions of cognitive-behavioral therapy for insomnia. AR 411. For two months in
5 2007, he engaged in psychotherapy, with biofeedback for stress management, three
6 times a week. AR 367, 403. The ALJ's reliance on conservative treatment is supported
7 by substantial evidence.

8 **3. Secondary Gain**

9 The ALJ noted that Torres' involvement in a pending worker's compensation
10 claim suggests the possibility of secondary gain. AR 23. To the extent the ALJ
11 discredited Torres' testimony because Torres sought benefits, that alone is not a valid
12 reason. See *Ratto v. Sec'y, Dept. of Health & Human Servs.*, 839 F. Supp. 1415, 1428-
13 29 (D. Or. 1993) ("If the desire or expectation of obtaining benefits were by itself
14 sufficient to discredit a claimant's testimony, then no claimant (or their spouse, or
15 friends, or family) would ever be found credible.").

16 Although the ALJ may not rely on this reason, remand would not necessarily be
17 warranted. In *Carmickle v. Comm'r, SSA*, 533 F.3d 1155 (9th Cir. 2007), the Ninth
18 Circuit concluded that two of the ALJ's reasons for making an adverse credibility finding
19 were invalid. When an ALJ provides specific reasons for discounting the claimant's
20 credibility, the question is whether the ALJ's decision remains legally valid, despite such
21 error, based on the ALJ's "remaining reasoning *and* ultimate credibility determination."
22 *Id.* at 1162 (italics in original). Reliance on an illegitimate reason(s) among others does
23 not automatically result in a remand. See *Batson v. Comm'r of Soc. Sec. Admin.*, 359
24 F.3d 1190, 1197 (9th Cir. 2004). In light of the ALJ's valid reasons for discounting
25 Torres' credibility and the record as a whole, substantial evidence supported the ALJ's
26 credibility finding. See *Bray v. Comm'r. of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th
27 Cir. 2009) (any error was harmless even if record did not support one of four reasons
28 for discounting claimant's testimony). Therefore, "we may not engage in

1 second-guessing.” *Thomas*, 278 F.3d at 959 (citing *Morgan v. Comm’r of Soc. Sec.*
2 *Admin.*, 169 F.3d 595, 600 (9th Cir. 1999)).

3 **F. Lay Witness Statement**

4 Torres argues the ALJ improperly discounted his wife’s statements.

5 The ALJ considered the lay witness statement of Torres’ wife and discounted her
6 statement because it was “entirely dependent upon the claimant,” who was not “fully
7 credible,” and her descriptions were “belied by the objective medical record.” AR 23-24.

8 Mrs. Torres provided a Function Report – Adult – Third Party, dated November
9 20, 2007. AR 163-70. She described Torres’ daily activities as watching television,
10 reading, and going outside in the backyard. AR 163. She stated Torres’ condition
11 affected his lifting, squatting, bending, standing, reaching, walking, sitting, kneeling,
12 talking, hearing, stair climbing, seeing, memory, ability to complete tasks, concentration,
13 understanding, ability to follow instructions, and use of his hands. AR 168. He can
14 drive, but he is afraid to be alone because the stroke happened when he was driving.
15 AR 166. The Function Report essentially mirrors Torres’ Function Report and
16 testimony. AR 54-76, 172-79. Because Mrs. Torres’ statement was cumulative, the
17 ALJ properly discounted her credibility. See *Valentine v. Comm’r of Soc. Sec. Admin.*,
18 574 F.3d 685, 694 (9th Cir. 2009) (When an ALJ has provided clear and convincing
19 reasons for rejecting a claimant’s testimony, and the lay witness’ testimony was similar
20 to the claimant’s testimony, “it follows that the ALJ also gave germane reasons for
21 rejecting the [lay witness’] testimony.”).

22 The ALJ discounted Mrs. Torres’ statement to the extent it was not supported by
23 the medical record. AR 23-24. Medical evidence provides a valid basis for discounting
24 lay witness testimony. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001) (“One reason
25 for which an ALJ may discount lay testimony is that it conflicts with medical evidence.”);
26 see also *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (stating inconsistency
27 with medical evidence is a germane reason for discrediting lay witness). As discussed
28 above, the functional assessments of Torres’ treating doctors showed that Torres’

1 impairments were not as limiting as claimed. AR 319, 321, 380. Substantial evidence
2 supports the ALJ's decision to discount Mrs. Torres' lay witness statement.

3 **IV.**

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the decision of the Commissioner is affirmed.

6 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order
7 and the Judgment herein on all parties or their counsel.

8
9
10 DATED: March 27, 2012



ALICIA G. ROSENBERG
United States Magistrate Judge